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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN JACKSON,

Defendant and Appellant.

B292795

(Los Angeles County  
Super. Ct. No. LA075502)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael V. Jesic and Gregory A. Dohi, Judges. Affirmed.

Stanley Dale Radtke, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven E. Mercer and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

Steven Jackson appeals from a judgment of conviction for corporal injury to a cohabitant and dissuading a witness entered following our remand in *People v. Jackson* (Apr. 24, 2018, B264585 (nonpub. opn.) (*Jackson I*). On appeal Jackson only challenges the trial court’s resentencing on remand to a greater term on the corporal injury count than the court previously imposed, although the aggregate sentence was less than the original sentence.

In *Jackson I*, we concluded the trial court violated Jackson’s constitutional right to self-representation by revoking his in propria persona status without considering whether Jackson’s conduct affected the integrity of the trial and whether alternative sanctions were appropriate. We agreed Jackson was entitled to a hearing to determine whether his *Faretta*<sup>1</sup> rights were properly terminated. We also concluded there was insufficient evidence to support the jury’s finding Jackson used a deadly or dangerous weapon (a broom) in the commission of the corporal injury.

We conditionally reversed the judgment and remanded to the trial court for a hearing on whether Jackson’s in propria persona status was properly terminated. We stated further, “If the court determines that Jackson is not entitled to represent himself in a new trial, the judgment should be reinstated, but the one-year weapon use enhancement and the five-year enhancement under [Penal Code] section 667, subdivision (a)(1),

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<sup>1</sup> *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

must be stricken, and Jackson is to be resentenced.”<sup>2</sup> (*Jackson I, supra*, B264585.)

On remand Jackson abandoned his request to represent himself, and the trial court held a resentencing hearing. The court followed our instruction to strike the one-year enhancement for use of a deadly or dangerous weapon and the five-year enhancement for Jackson having suffered a prior serious felony conviction. However, the court also determined the appropriate sentence on the corporal injury count was the upper term of four years, doubled under the three strikes law (§§ 667, subds. (b)-(i), 1170.12), although the court at trial had previously sentenced Jackson to the middle term of three years, doubled. The trial court sentenced Jackson to an aggregate term of eight years eight months, in contrast to the original sentence of 12 years eight months.

Jackson contends on appeal the trial court, by resentencing him to a higher term on the corporal injury count, exceeded its authority on remand and violated the federal and state constitutional prohibitions against double jeopardy. However, interpreting the dispositional language in conjunction with the opinion as a whole, the trial court reasonably understood it had the authority on remand to resentence Jackson. Because the aggregate sentence imposed by the trial court did not exceed the original sentence imposed following trial, we affirm.

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<sup>2</sup> All further statutory references are to the Penal Code.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Evidence at Trial*<sup>3</sup>

In 2013 Jackson lived with his girlfriend Laurence Yhuello. On October 6, 2013 they got into an argument that escalated into a physical altercation. During the incident, Jackson wrestled Yhuello to the floor, physically restrained her, and put his hand over her mouth and squeezed her jaw to stop her from screaming. Yhuello went into the bedroom, where Jackson hit her lower back, buttocks, and legs with a small “house” broom with a plastic stick. She sustained noticeable bruises on her buttocks, chin, and arm. (*Jackson I, supra*, B264585.)

In 2013 Yhuello reported to the police Jackson had strangled her until she could not breathe, pushed her against a wall, slapped the back of her head, and pulled her hair. Photographs from the incident showed she had a black eye, bruised chin, and red marks on her neck. On a prior occasion in 2012 Jackson used a PVC pipe to pin Yhuello to the wall, resulting in red marks on Yhuello’s left shoulder area. In a 2009 incident Jackson was in the car with a former girlfriend and tried to grab the steering wheel to pull the car over to the side of the road. Once they were off the highway, Jackson hit her with both fists 10 or 15 times in her jaw, arm, side, and hip. (*Jackson I, supra*, B264585.)

During the period from October 14 to November 20, 2013 Jackson called Yhuello 42 times from jail. In the recorded calls, Jackson repeatedly told Yhuello not to show up to court and not

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<sup>3</sup> We discuss the procedural history of the case and the evidence presented at trial in more detail in *Jackson I*.

to mention she saw him with a broom in his hands. (*Jackson I, supra*, B264585.)

B. *The Verdict and Sentencing*

The jury found Jackson guilty of corporal injury to a spouse or cohabitant (§ 273.5, subd. (a); count 1) and dissuading a witness from testifying (§ 136.1, subd. (a); count 3).<sup>4</sup> The jury also found true the allegation Jackson personally used a deadly or dangerous weapon, a broom (§ 12022, subd. (b)(1)), in the commission of the corporal injury. Jackson admitted he suffered a prior serious felony conviction, constituting a strike within the meaning of the three strikes law and a serious felony within the meaning of section 667, subdivision (a)(1).

The trial court sentenced Jackson to an aggregate term of 12 years eight months in state prison. On count 1 the court imposed the middle term of three years, doubled under the three strikes law, plus one year for the weapon use enhancement and five years for the prior serious felony conviction enhancement. The court imposed a consecutive term of eight months (one-third the middle term) on count 3.<sup>5</sup>

C. *Jackson's First Appeal*

In Jackson's first appeal, he contended the trial court violated his constitutional right to self-representation by

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<sup>4</sup> The jury found Jackson not guilty of making criminal threats (§ 422), as charged in count 2.

<sup>5</sup> The information only charged Jackson with the prior conviction of a serious felony under the three strikes law on counts 1 and 2. Accordingly, the trial court only doubled the sentence on count 1.

revoking his in propria persona status without adequate cause. He raised other challenges, including to the trial court's imposition of a sentence enhancement for his use of a deadly or dangerous weapon. We agreed Jackson was entitled to a hearing to determine whether his *Faretta* rights were properly terminated. (*Jackson I, supra*, B264585.) We also concluded there was insufficient evidence to support the jury's finding the broom was a deadly or dangerous weapon. We conditionally reversed the judgment and remanded to the trial court for a hearing on whether Jackson's in propria persona status was properly terminated.

We stated further, "If the court determines that Jackson is not entitled to represent himself in a new trial, the judgment should be reinstated, but the one-year weapon use enhancement and the five-year enhancement under section 667, subdivision (a)(1), must be stricken, and Jackson is to be resentenced." (*Jackson I, supra*, B264585.) We stated in the disposition, "If the trial court finds Jackson's *Faretta* rights were properly terminated, the court should reinstate the judgment, but strike the one-year enhancement for use of a deadly or dangerous weapon and the five-year enhancement under section 667, subdivision (a)(1)." (*Ibid.*)

#### D. *Proceedings on Remand*

On remand Jackson abandoned his request to represent himself at trial. The trial court,<sup>6</sup> although acknowledging Jackson was no longer seeking to represent himself, found it had properly terminated Jackson's *Faretta* rights. The court

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<sup>6</sup> Judge Michael V. Jesic.

explained that Jackson was using his in propria persona privileges to make phone calls to Yhuello from the jail and would not have followed the court's orders not to have contact with her, affecting the integrity of the trial. During the hearing the trial court noted if Jackson were resentenced at that point to six years eight months in prison (assuming the trial court only struck the one- and five-year enhancements), Jackson would likely be released. The court transferred the matter to the trial court that presided over the trial.

After the transfer, the trial court<sup>7</sup> initially stated it was "inclined" again to impose the middle term on count 1 for inflicting corporal injury, but requested the parties address whether it should instead impose the lower or upper term. Defense counsel stated her belief the trial court was limited to imposition of the middle or lower term in light of the remand from this court. The prosecutor stated his understanding the trial court could consider imposing the upper term in light of "the manner in which the beatings of the victim did occur." The trial court agreed, and it stated it "would be inclined to impose the high term. Here's why: the vulnerability of the victim and the seriousness of the offense. I can recall the photographs taken of the victim showing significant bruising." The court continued the sentencing hearing for the parties to address whether the court had the discretion to impose the upper term and, if so, whether the upper term was appropriate.

At the continued hearing, the trial court considered the case law cited by the parties and concluded it had the authority to impose the upper term. After hearing argument from counsel,

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<sup>7</sup> Judge Gregory A. Dohi.

the trial court imposed the upper term on count 2 of four years, doubled under the three strikes law. The court discussed the aggravating factors under California Rules of Court, rule 4.421, that supported the sentence, including “the violence and the current offense, the use of a weapon, albeit not a dangerous or deadly one, the vulnerability of the victim and Mr. Jackson’s violent history . . . .” The court again imposed a consecutive term of eight months (one-third the middle term) on count 2. The trial court sentenced Jackson to an aggregate term of eight years eight months in state prison. Jackson timely appealed.

## DISCUSSION

### A. *The Trial Court Had the Authority Following Remand To Consider a Higher Sentence on Count 1*

Jackson contends the trial court exceeded the scope of the remittitur by failing to follow this court’s direction specifically to strike the enhancements imposed for use of a deadly or dangerous weapon, arguing “[n]owhere does the remittitur grant the trial court authority to resentence [Jackson]” on the underlying count.<sup>8</sup> The People point to the language in our opinion that Jackson was to be resentenced on remand to support their argument the trial court properly resentenced Jackson on the corporal injury count. The People are correct.

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<sup>8</sup> Jackson does not contend on appeal the trial court abused its discretion in selecting the upper term on the corporal injury count, instead arguing the court exceeded its authority and violated the prohibition against double jeopardy by resentencing him on this count.



“The court may reverse, affirm, or modify a judgment or order appealed from, . . . and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.” (§ 1260.) “The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned. ‘The order of the appellate court as stated in the remittitur, “is decisive of the character of the judgment to which the appellant is entitled.”’” (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701; accord, *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774, fn. 5 “[T]he terms of the remittitur define the trial court’s jurisdiction to act.”); *People v. Ramirez* (2019) 35 Cal.App.5th 55, 64 (*Ramirez*) “[W]hen an appellate court remands a matter with directions governing the proceedings on remand, “those directions are binding on the trial court and *must* be followed. Any material variance from the directions is unauthorized and void.””]; *Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859 (*Ayyad*) [same]; *People v. Dutra* (2006) 145 Cal.App.4th 1359, 1366 [On remand “the trial court is revested with jurisdiction of the case, *but only to carry out the judgment as ordered by the appellate court.*”].)

In interpreting the language of a judicial opinion, the appellate court looks to the wording of the dispositional language, construing these directions “in conjunction with the opinion as a whole.” (*Ayyad, supra*, 210 Cal.App.4th at p. 859; accord, *Ducoing Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 313; *Combs v. Haddock* (1962) 209 Cal.App.2d 627, 631 (*Combs*).) “If a remittitur is *ambiguous* the trial court can interpret it in light of the law and the

appellate opinion to determine its duties.” (*People v. Dutra, supra*, 145 Cal.App.4th at p. 1368; accord, *Ayyad*, at p. 863, fn. 7; *Combs*, at p. 631.) As the court in *Combs* explained, “The interpretation of a remittitur requires that the court’s opinion be consulted, especially in case of ambiguity [citations], and that meaning given to it which harmonizes with the court’s ruling.” (*Combs*, at p. 631.) We review de novo whether the trial court has correctly interpreted our appellate opinion. (*Ducoing Management*, at p. 313; *Ayyad*, at p. 859.)

In *Combs*, the Court of Appeal interpreted a remittitur that provided for “[c]osts to appellants” where the appellants prevailed on appeal as to the portion of the trial court judgment in favor of plaintiff Gladys Mashon on behalf of her husband’s estate, but not as to Mashon’s individual claim. (*Combs, supra*, 209 Cal.App.2d at p. 632.) After appellants appealed the trial court’s award of costs to Mashon on her individual claim, the Court of Appeal considered its prior opinion and concluded the remittitur should be interpreted to treat the appeal of the judgment as to Mashon’s individual claim separate from the appeal as to the husband’s estate, affirming the trial court’s award of costs to Mashon. (*Ibid.*)

By contrast, in *People v. Dutra*, the trial court disobeyed the clear instruction of the remittitur for the trial court on remand to hold a sentencing trial, instead following intervening case law under which the defendant would not be entitled to a sentencing trial. (*People v. Dutra, supra*, 145 Cal.App.4th at pp. 1361-1362.) The court in the second appeal reversed, concluding “the remittitur was not ambiguous.” (*People v. Dutra, supra*, 145 Cal.App.4th at p. 1368.) Similarly, as the dissent aptly points out, in both *Ducoing Management, Inc. v. Superior*

*Court, supra*, 234 Cal.App.4th at page 314 and *Ayyad, supra*, 210 Cal.App.4th at page 863, the appellate courts concluded the trial courts on remand exceeded their jurisdiction where there was no ambiguity in the dispositional language. In *Ducoing Management*, the dispositional language provided the judgment of nonsuit granted against one plaintiff was affirmed, and “the judgment [was] reversed ‘[i]n all other respects.’” (*Ducoing Management*, at p. 311.) After the trial court construed the disposition to allow enforcement of the provision in the judgment for costs against both plaintiffs, the Court of Appeal issued a writ of mandate ordering the trial court to vacate its order, concluding the dispositional language reversing the judgment “[i]n all other respects” was “unqualified” in reversing both the judgment against the second plaintiff and the cost award. (*Id.* at p. 314.) In reaching this conclusion, the court explained, “There is nothing in our opinion to suggest that the cost portion of the second paragraph of the judgment survived our reversal ‘[i]n all other respects.’” (*Ibid.*; see *Ayyad*, at p. 863, fn. 7 [court’s disposition affirming judgment in favor of plaintiffs and grant of partial new trial on calculation of damages and potential setoff “was not ambiguous” in limiting remand to retrial of damages calculation and setoff, barring trial court’s consideration of motion to compel arbitration].)

“[W]hen part of a sentence is stricken on review, on remand for resentencing ‘a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.’” (*People v. Buycks* (2018) 5 Cal.5th 857, 893; accord, *Ramirez, supra*, 35 Cal.App.5th at p. 64 [“When a case is remanded for resentencing by an appellate court, the trial court is entitled to

consider the entire sentencing scheme.’ [Citations.] Thus, per our remittitur, the trial court had jurisdiction to consider any and all factors that would affect sentencing.”]; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1259 (*Burbine*) [on remand “the trial court has jurisdiction to modify every aspect of the defendant’s sentence on the counts that were affirmed, including the term imposed as the principal term”].)

In *Burbine*, a jury convicted the defendant of the continuous sexual abuse of a child and two counts of committing a lewd act on a child, each involving a different victim. (*Burbine, supra*, 106 Cal.App.4th at p. 1254.) The court sentenced the defendant to an aggregate term of 16 years in state prison, imposing the middle term of 12 years for the continuous sexual abuse offense. (*Ibid.*) After the Court of Appeal reversed one of the convictions for lewd conduct and remanded for resentencing, the trial court resentenced the defendant to the upper term of 16 years for the continuous sexual abuse offense, ordered the sentence on the lewd conduct offense to run concurrently, and imposed the same aggregate sentence as the court had initially imposed. (*Id.* at p. 1255.) The Court of Appeal affirmed, explaining, “[O]n remand following the reversal of a felony count for which a subordinate term had been imposed, neither lack of jurisdiction nor res judicata bars the trial court from reconsidering its prior sentencing choices made under the normal rules of felony sentencing, including imposing a higher term for the principal, or base, term, so long as the total prison term for all affirmed counts does not exceed the original aggregate sentence.” (*Id.* at p. 1253; see *People v. Castaneda* (1999) 75 Cal.App.4th 611, 612, 614 [affirming trial court’s exercise of discretion to sentence defendant to upper term for conviction of

assault with a firearm after the court determined it erred in imposing two sentence enhancements for the same offense, even though the court had previously imposed the middle term, because the aggregate sentence was less than the original sentence].) As the court in *Castaneda* observed, “A judge’s subjective belief regarding the length of the sentence to be imposed is not improper as long as it is channeled by the guided discretion outlined in the myriad of statutory sentencing criteria.” (*Castaneda*, at p. 614.)<sup>9</sup>

Here, we directed the trial court in our dispositional language to strike the enhancements for use of a deadly or dangerous weapon and for a prior serious felony conviction. The trial court followed this direction. The dispositional language was silent as to whether, after striking the enhancements, the trial court was authorized to modify the sentence on count 1 before imposing the recalculated sentence. However, the opinion clarifies that in addition to striking the enhancements, “Jackson is to be resentenced.” (*Jackson I, supra*, B264585.) In light of the ambiguity of the dispositional language, we interpret the disposition “in conjunction with the opinion as a whole,” which makes clear Jackson was to be resentenced on remand. (*Ayyad, supra*, 210 Cal.App.4th at p. 859; accord, *Ducoing Management, Inc. v. Superior Court, supra*, 234 Cal.App.4th at p. 313; *Combs, supra*, 209 Cal.App.2d at p. 631.)

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<sup>9</sup> Jackson seeks to distinguish *Castaneda* on the ground the trial court resentenced the defendant following revocation of probation, not on remand following an appeal. While Jackson is correct as to this distinction, the same analysis of sentencing choices available to the trial court applies on remand, as long as the remittitur provided for resentencing, as it did here.

B. *The Resentencing of Jackson Did Not Violate His Rights Under the Federal and State Double Jeopardy Clauses*

Jackson contends the trial court's increase in the sentence on count 1 for corporal injury violated the federal and state double jeopardy clauses. This contention lacks merit because the aggregate sentence was less than the sentence imposed following trial.

We review de novo whether the sentence imposed by the trial court violated the state prohibition against double jeopardy.<sup>10</sup> (*People v. Gonzalez* (2015) 241 Cal.App.4th 1103, 1108 ["When evidence is uncontradicted, the question of former jeopardy is one of law for the court to decide."]; *People v. Davis* (2011) 202 Cal.App.4th 429, 438 ["[W]hen the facts are uncontradicted and different inferences cannot be drawn, the question of former jeopardy is one of law for the court to

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<sup>10</sup> The California protection under the double jeopardy clause against imposition of a greater sentence following a successful appeal is broader than the federal prohibition against double jeopardy. (*People v. Monge* (1997) 16 Cal.4th 826, 844 ["The rule . . . protecting defendants from receiving a greater sentence if reconvicted after a successful appeal [citations] is one instance where we have interpreted the state double jeopardy clause more broadly than the federal clause."]; accord, *People v. Craig* (1998) 66 Cal.App.4th 1444, 1447 ["the protections afforded by our state constitution are broader than those afforded by the federal constitution"]; see *People v. Hanson* (2000) 23 Cal.4th 355, 358 ["the federal double jeopardy clause 'imposes no restrictions upon the length of a sentence imposed upon reconviction'"].) We therefore analyze Jackson's claim under the more protective California prohibition against double jeopardy.

decide. . . . On appeal, we review questions of law de novo.”  
(Citations omitted.)].)

“When a defendant successfully appeals a criminal conviction, California’s constitutional prohibition against double jeopardy precludes the imposition of more severe punishment on resentencing.” (*People v. Hanson* (2000) 23 Cal.4th 355, 357 [increase in restitution fine on remand violated state constitutional prohibition against double jeopardy]; *People v. Collins* (1978) 21 Cal.3d 208, 216 [on remand People could revive dismissed counts, but potential sentence could not exceed three years in prison that could have been imposed based on earlier negotiated plea]; *People v. Hood* (1969) 1 Cal.3d 444, 459 [on remand following a new trial, court could impose no more than 14-year maximum sentence had defendant not appealed]; *People v. Craig, supra*, 66 Cal.App.4th at p. 1448 [trial court’s imposition of greater sentence on burglary count after remand and retrial did not violate double jeopardy clause where aggregate sentence was less than original sentence]; *People v. Calderon* (1993) 20 Cal.App.4th 82, 89 [trial court’s imposition on remand of consecutive one-year sentence on robbery count where sentence was previously stayed did not violate double jeopardy clause because aggregate sentence was the same as the original sentence].)

As the Supreme Court observed in *Collins*, the principles of double jeopardy are designed to “preclude vindictiveness and more generally to avoid penalizing a defendant for pursuing a successful appeal.” (*People v. Collins, supra*, 21 Cal.3d at p. 216.) Although California’s constitutional prohibition against double jeopardy therefore bars imposition of a greater aggregate sentence on remand in the absence of an unauthorized initial

sentence, it does not bar the trial court's imposition of a greater sentence on a single count. As the court in *Craig* explained, the "double jeopardy analysis does not require us to break defendant's aggregate sentence, which was no greater than his original sentence, into components so as to limit his sentence vulnerability on the burglary conviction to the mitigated term originally imposed." (*People v. Craig, supra*, 66 Cal.App.4th at p. 1452.)

Jackson relies on *People v. Price* (1986) 184 Cal.App.3d 1405 to support his contention the trial court violated his rights in imposing a greater sentence on the corporal injury count following his successful appeal. *Price* is distinguishable. In *Price*, the defendant was sentenced at trial to an aggregate term of 35 years. (*Id.* at p. 1407.) The Court of Appeal affirmed the conviction but remanded for resentencing to correct sentencing errors. (*Ibid.*) On remand, the trial court sentenced the defendant to an aggregate term of 50 years in state prison. (*Ibid.*) In a second appeal, the Court of Appeal affirmed the increase in the sentence from 35 to 47 years on the basis the original sentence was an unauthorized sentence, and "[c]onsequently, the sentencing court on remand had the power to impose a harsher term and was correct in doing so." (*Id.* at p. 1412.) However, the court concluded the trial court erred in adding three years to the sentence by imposing the upper term on the sexual assault count (instead of the middle term) and a consecutive term on the robbery count (instead of a concurrent term), because the changes to the sentence "were not corrections of 'illegalities' in the original sentence." (*Id.* at p. 1413.) Here, the trial court on remand reduced the sentence from 12 years eight months to eight years eight months. Because the



aggregate sentence following the appeal was lower than the sentence the trial court imposed following trial, the holding in *Price* is not on point. Rather, as in *Craig* and *Calderon*, the trial court had the discretion to resentence Jackson to any authorized term, as long as the trial court did not increase the aggregate term. (*People v. Craig, supra*, 66 Cal.App.4th at p. 1452; *People v. Calderon, supra*, 20 Cal.App.4th at p. 89; see *People v. Hanson, supra*, 23 Cal.4th at p. 357; *People v. Collins, supra*, 21 Cal.3d at p. 216.)

Finally, Jackson argues the trial court's increase of the sentence on the corporal injury count violated the prohibition against double jeopardy because it was "vindictive," punishing him for his appeal. But the trial court supported the increase in sentence by its reference to aggravating factors under California Rules of Court, rule 4.421, including "the violence and the current offense, the use of a weapon, albeit not a dangerous or deadly one, the vulnerability of the victim and Mr. Jackson's violent history . . . ." The trial court's resentencing of Jackson therefore did not run afoul of the double jeopardy clause.

## DISPOSITION

The judgment is affirmed.

FEUER, J.

I CONCUR:

PERLUSS, P. J.

SEGAL, J., Dissenting.

“The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void.” (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655; see *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701 [“The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned.”].) “Where a reviewing court reverses a judgment with directions . . . the trial court is bound by the directions given and has no authority to retry any other issue or to make any other findings. Its authority is limited wholly and solely to following the directions of the reviewing court.” (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1367; accord, *Beach Break Equities, LLC v. Lowell* (2016) 6 Cal.App.5th 847, 853-854; see *People v. Picklesimer* (2010) 48 Cal.4th 330, 337 [“Following appellate affirmance of a trial court judgment and issuance of a remittitur, ‘the trial court is revested with jurisdiction of the case, but only to carry out the judgment as ordered by the appellate court.’”]; *Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982 [“When an appellate court’s reversal is accompanied by directions requiring specific proceedings on remand, those directions are binding on the trial court and *must* be followed.”].)

Our disposition in *People v. Jackson* (Apr. 24, 2018, B264585) (nonpub. opn.) (*Jackson I*) states: “If the trial court finds Jackson’s *Faretta* rights were properly terminated, the court should reinstate the judgment, but strike the one-year enhancement for use of a deadly or dangerous weapon and the five-year enhancement under section 667, subdivision (a)(1).” To me, this language is unambiguous. It directs the trial court to do two things if, as here, the court finds it did not violate Jackson’s rights under *Faretta*: (1) strike the one-year enhancement and (2) strike the five-year enhancement. The majority acknowledges the trial court had to follow these directions. (See maj. opn. *ante*, at p. 6.) From my perspective, that should be the end of the

matter. The disposition in *Jackson I*, unlike the dispositions in the cases on which the majority relies, did not direct the trial court to resentence Jackson. Such a disposition would have stated “The matter is remanded for resentencing, including striking the one-year and five-year enhancements,” or “The matter is remanded with directions to strike the one-year and five-year enhancements, and for resentencing,” or even the dreaded “The matter is remanded for resentencing in accordance, or not at least inconsistent, with the views expressed in this opinion.” We could have authorized the trial court in any of these (or other) ways to resentence Jackson, but we did not.

The cases cited by the majority support the opposite conclusion the majority reaches. In *Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851 (*Ayyad*), the court held the trial court did *not* have jurisdiction to grant the defendant’s motion to compel arbitration after the disposition in the first appeal stated: “The matter is remanded for retrial on the issue of [the defendant’s] damages, and the calculation of any offset to which [the defendant] may be entitled.” (*Id.* at pp. 854, 857.) The court in *Ayyad* stated: “Our remittitur directions are contained in the dispositional language of our previous opinion. . . . We look to the wording of our directions to determine whether the trial court’s order comports with them.” (*Id.* at p. 859.) The court held: “The issues the trial court may address in the remand proceedings are therefore limited to those specified in the reviewing court’s directions, and if the reviewing court does not direct the trial court to take a particular action or make a particular determination, the trial court is not authorized to do so. [¶] On remand, the trial court must adhere to the reviewing court’s directions even if the lower court is convinced the appellate court’s decision is wrong or has ‘been impaired by subsequent decisions.’” (*Id.* at pp. 859-860.) The court in *Ayyad* emphasized: “The lower court has jurisdiction to consider *only* those issues specified in our disposition. That we did not expressly comment on the issue of arbitration does not render that fundamental rule inapplicable. . . . The case law is clear . . . that the trial court’s jurisdiction on remand extends only to those issues on which the

reviewing court *permits* further proceedings. [Citations.] The trial court may not expand the issues on remand to encompass matters outside the scope of the remittitur merely because the reviewing court has not expressly forbidden the trial court from doing so. (*Id.* at p. 863.) Under *Ayyad*, our dispositional silence in *Jackson I* on resentencing did not authorize the trial court to revisit any aspect of Johnson’s sentence other than striking the two enhancements. Contrary to the majority’s holding (maj. opn. *ante*, at pp. 9-10), and even if there were an ambiguity in the disposition, silence is not enough.

In *Ducoin Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306 (*Ducoin*) the court held the trial court did *not* have jurisdiction to enforce a cost award entered before the first appeal. The disposition in the first appeal stated, in relevant part, that the judgment against one of the plaintiffs was affirmed, and “[i]n all other respects, the judgment is reversed and the matter is remanded for further proceedings.” (*Id.* at pp. 309-310, 311, italics omitted.) The court in *Ducoin* stated: “The disposition articulates what the trial court should do, with clear and understandable instructions, and whether and how the trial court should exercise its discretion upon remand.” (*Id.* at p. 309; see *id.* at p. 313 [“the directions in the dispositional language . . . are to be followed by the trial court on remand”].) The court explained: “The disposition constitutes the rendition of the judgment of appeal, and is the part of the opinion where we, in popular parlance, deliver the goods. ‘The “judgment” on appeal must be distinguished from the appellate court’s “opinion” in general. The body of the written opinion discusses the procedural history, the facts and the applicable law. The actual judgment is the one-paragraph disposition . . . found at the end of the opinion.’” (*Id.* at p. 312, italics omitted.) Thus, *Ducoin* not only holds that the trial court must follow the directions in the disposition, and only the disposition, but teaches that the language of the disposition takes priority over other parts of the opinion. *Ducoin* disapproves of doing

exactly what the majority does: focus on language in the “body” of the opinion to the detriment of the directions in the disposition.

The majority relies on a single line that appears in the introduction to the *Jackson I* opinion but not the disposition: “Jackson is to be resentenced.” (Maj. opn. *ante*, at p. 13.) The majority states that the opinion in *Jackson I* “clarifies that in addition to striking the enhancements, ‘Jackson is to be resentenced.’” (*Ibid.*) I do not think that lone line, nestled in the fourth paragraph of the introduction in *Jackson I*, is really a clarification. In my view, *Ayyad* and *Ducoin* preclude a trial court from following language in the introduction (or any other part of the opinion) that is not in the disposition. Nor do I think the majority’s reading of that language is a fair one. The entire sentence in the introduction states: “If the court determines that Jackson is not entitled to represent himself in a new trial, the judgment should be reinstated, but the one-year weapon use enhancement and the five-year enhancement under section 667, subdivision (a)(1), must be stricken, and Jackson is to be resentenced.” (*Jackson I, supra*, B264585) In light of the disposition, which limits the trial court’s jurisdiction on remand to striking the two enhancements, the more reasonable interpretation of this sentence is that the trial court must resentence Jackson by, and only by, striking the one-year and five-year enhancements.

To be sure, the court in *Ayyad* stated: “When, as in this case, the reviewing court remands the matter for further proceedings, its directions must be read in conjunction with the opinion as a whole.” (*Ayyad, supra*, 210 Cal.App.4th at p. 859.) And the court in *Ducoin* similarly stated: “The disposition is construed according to the wording of its directions, as read with the appellate opinion as a whole.” (*Ducoin, supra*, 234 Cal.App.4th at p. 313.) The “opinion as a whole” in *Jackson I*, however, did not suggest we authorized the trial court on remand to do anything other than what the disposition unambiguously told the trial court to do: strike the two enhancements. The only discussion in the *Jackson I* opinion about sentencing concerned the one-year enhancement under section 12022, subdivision (b)(1), for

personal use of a deadly or dangerous weapon, which we held substantial evidence did not support (*Jackson I*, *supra*, B264585), and the five-year enhancement under section 667, subdivision (a)(1), which we held could not stand because Jackson’s conviction was no longer, absent the use of a deadly or dangerous weapon, a serious felony (*ibid*). Other than the discussion of these two enhancements, there is no discussion in the “opinion as a whole” of any other sentencing error or of any need to resentence Jackson in any other regard.<sup>1</sup>

The majority also relies on several cases where the appellate court remanded with directions to resentence the defendant. For example, in *People v. Ramirez* (2019) 35 Cal.App.5th 55 the court stated, “[W]e remanded the matter with directions to the trial court to ‘resentence both defendants in accordance with the requirements outlined in [*People v. Gutierrez* (2014) 58 Cal.4th 1354].” (*Ramirez*, at p. 64.) It was in light of this disposition that the court in *Ramirez* stated, “When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme.” (*Ibid.*) In *People v. Burbine* (2003) 106 Cal.App.4th 1250 the court in the first appeal “remanded the case for resentencing.” (*Id.* at p. 1254.) The court in *Burbine* held that, in the circumstances of that case, “upon remand for resentencing after the reversal of one or more subordinate counts of a felony conviction, the trial court has jurisdiction to modify every aspect of the defendant’s sentence on the

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<sup>1</sup> The opinion in *Combs v. Haddock* (1962) 209 Cal.App.2d 627, cited by the majority, contains the line, “The interpretation of a remittitur requires that the court’s opinion be consulted, especially in case of ambiguity [citations], and that meaning given to it which harmonizes with the court’s ruling.” (*Id.* at p. 631.) Putting aside my view there is no ambiguity in the disposition in *Jackson I*, consulting the opinion in *Jackson I* and harmonizing it with the disposition leads to only one result: The opinion’s discussion of the five-year and one-year sentence enhancements, and only those sentencing issues, limited the trial court’s authority on remand to striking the two enhancements.

counts that were affirmed . . . .” (*Id.* at p. 1259.) In contrast to these two cases, *Jackson I* did not remand for resentencing; it remanded to strike the two enhancements.<sup>2</sup>

Given the unambiguous (to me) language of the disposition, and the holdings of the cases cited by the majority, the trial court did not have authority to resentence Jackson on remand in the way the court did. I would vacate the sentence and impose the original sentence of the middle term of three years, doubled under the three strikes law, without the two enhancements we ordered the trial court to strike. Because I believe trial courts are bound by the directions in a reviewing court’s disposition, I respectfully dissent.

SEGAL, J.

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<sup>2</sup> It is unclear from the court’s opinion in *People v. Castaneda* (1999) 75 Cal.App.4th 611, another case cited by the majority, whether there was a prior appeal and, if so, what the disposition in that appeal stated. Although there was a resentencing, the opinion in *Castaneda* does not describe or discuss the prior appeal or the remand directions in the case, other than making an oblique “as in this case” reference to another case, *People v. Savala* (1983) 147 Cal.App.3d 63, in which “remand for resentencing was required due to imposition of an improper enhancement.” (*Castaneda*, at p. 614.)